

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD LAWRENCE ALLEY,

No. C 11-1915 SI (pr)

Plaintiff,

ORDER

v.

Correctional Officer Q. GREENE,

Defendant.

Richard Lawrence Alley "sui juris-pro se affiant" commenced this action by filing a document entitled "Federal Rules Of Civil Procedure Rule 55, Default (a) and (b), and (1)" and "Commercial Affidavit Of Truth And Fact." (Docket # 1.) The court dismissed the action as legally frivolous and for the separate and independent reason that plaintiff failed to file a completed *in forma pauperis* application.


Plaintiff has filed a motion to reconsider the dismissal order. (Docket # 7.) A motion for reconsideration under Federal Rule of Civil Procedure 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the law." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (citation omitted) (en banc). The motion for reconsideration is DENIED with regard to the dismissal of the action as legally frivolous and GRANTED with regard to the dismissal for failure to file a completed *in forma pauperis* application. The court's determination that the *in forma pauperis* application was incomplete was erroneous: the application was complete. The court therefore reconsiders and vacates the

1 determination that the case must be dismissed due to the failure to file a completed *in forma*
2 *pauperis* application. That being done, the dismissal of the action as legally frivolous remains
3 as the sole basis for the dismissal.

4 By separate order, the court will rule on the *in forma pauperis* application.

5 IT IS SO ORDERED.

6 Dated: September 7, 2011

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SUSAN ILLSTON
United States District Judge